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ARIZONA CORP. COMM  
400 W CONGRESS STE 218 TUCSON AZ 85701

ADMITTED TO PRACTICE IN:  
ARIZONA, COLORADO, MONTANA,  
NEVADA, TEXAS, WYOMING,  
DISTRICT OF COLUMBIA

November 1, 2006

Shaunna Lee-Rice  
Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

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AZ CORP COMMISSION  
DOCUMENT CONTROL

Re: Las Quintas Serenas Water Co.  
Docket No. W-01583A-06-0437

Dear Ms. Lee-Rice,

Enclosed for filing in the above-referenced docket are the original and thirteen (13) copies of an Applicant's (I) Opposition To Intervenor's Gay and Appleby's Requests For Intervention, Or, In The Alternative, (II) Motion In Limine ("Opposition and Motion").

Also enclosed are two (2) additional copies of the Opposition and Motion. I would appreciate it if you would "filed" stamp the same and return them to me in the enclosed stamped and addressed envelope.

Thank you for your assistance with regard to this matter.

Sincerely,

*Lawrence V. Robertson, Jr.*

Lawrence V. Robertson, Jr.

Arizona Corporation Commission  
DOCKETED

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

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ARIZONA CORP. COMM  
400 W CONGRESS STE 218 TUCSON AZ 85701

IN THE MATTER OF THE APPLICATION ) DOCKET NO. W-01583A-06-0437  
OF LAS QUINTAS SERENAS WATER )  
CO. FOR AUTHORITY TO INCUR LONG- ) APPLICANT'S (I) OPPOSITION TO  
TERM INDEBTEDNESS TO FINANCE ) INTERVENORS GAY AND APPLEBY'S  
WATER SYSTEM IMPROVEMENTS. ) REQUESTS FOR INTERVENTION, OR,  
) IN THE ALTERNATIVE, (II) MOTION IN  
) LIMINE

I.

INTRODUCTION

Las Quintas Serenas Water Co. ("LQS") hereby submits its opposition to the requests of John S. Gay ("Gay") and Jane Appleby ("Appleby") for intervention in the above-captioned proceeding. A careful reading of each request readily discloses that the underlying purpose and objective of each prospective intervenor is to collaterally attack Decision No. 68718, which was issued by the Commission on June 1, 2006 in Docket Nos. W-01583A-04-0178, W-01583A-05-0326 and W-01583A-05-0340 (collectively "Consolidated Dockets").

II.

BACKGROUND

Gay was an intervenor and an active participant in the Consolidated Dockets through the public hearing, recommended Opinion and Order and Exception phases. Appleby, who is Gay's

1  
2 daughter, spoke during the public comment portion of the public hearing on March 1, 2006.  
3 Each of them advocated Commission adoption of what is referred to as the Miller Brooks Plan  
4 for arsenic remediation on the LQS water system. The majority of LQS's Board of Directors,  
5 and the company's management, supported what is referred to as the WestLand Resources Plan  
6 for arsenic remediation throughout the proceeding in the Consolidated Dockets.  
7

8 In Decision No. 68718, the Commission authorized LQS to proceed with either the Miller  
9 Brooks Plan or the WestLand Resources Plan. In addition, it authorized LQS to borrow up to  
10 \$1.586 million from the Arizona Water Infrastructure Financing Authority ("WIFA") to  
11 construct an arsenic remediation system for LQS. The borrowing authorization was greater than  
12 the estimated cost of the Miller Brooks Plan, and equal to the estimated cost of that portion of the  
13 WestLand Resources Plan directly related to arsenic remediation. The remainder of the  
14 WestLand Resources Plan includes construction of additional storage and a back-up 130 KW  
15 generator.  
16

17 Subsequent to the issuance of Decision No. 68718, the majority of the LQS Board of  
18 Directors decided to continue with its original decision to construct the facilities recommended  
19 in the WestLand Resources Plan, because that plan included the additional storage and back-up  
20 generator that were believed to be necessary to LQS' ongoing ability to provide adequate and  
21 reliable water service to its customers. In connection with that determination, the majority of the  
22 LQS Board of Directors also approved the filing of the \$440,714 financing authorization request  
23 which is the subject of the above-captioned proceeding and docket number. Gay dissented from  
24 each of those decisions by the LQS Board of Directors, and has continued to advocate for the  
25 Miller Brooks Plan whenever he sees what he believes to be an opportunity to do so.  
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III.

DISCUSSION

Gay, with the support of his daughter, seeks to convert this proceeding into such an "opportunity." Illustrative of this is the following statement from his October 11, 2006 request for intervention:

"I strongly believe...that the Miller Brooks design will give LQS a better, and more reliable system than the company's Westland design..." [page 1, 2<sup>nd</sup> paragraph] [Emphasis in original]

Further illustrative of the real objective of his intervention request is the following statement:

"I definitely desire a formal evidentiary hearing so I will be able to present facts and figures to back up my position." [page 2, 1<sup>st</sup> paragraph] [Emphasis added]

Gay's "position" is his goal that the Commission issue a decision directing LQS to adopt the Miller Brooks Plan, and only that plan. Angry that he has failed to persuade the remainder of the LQS Board of Directors, as well as the operating management, to embrace his viewpoint, he is now, in effect, seeking to reverse the discretion that the Commission accorded to LQS' Board of Directors and its operating management in Decision No. 68718 as to which arsenic remediation program to implement.

Plain and simple, Gay is seeking through his requested intervention in this proceeding to collaterally attack Decision No. 68718. In this regard, it should be noted that Gay did not bother to attend the May 25, 2006 Open Meeting at which the Commission considered (and adopted with slight amendment) Administrative Law Judge Rodda's recommended Opinion and Order in the Consolidated Dockets. Nor did he seek rehearing or reconsideration of Decision No. 68718, after it was issued on June 1, 2006. In short, he did not exhaust his administrative remedies. But

1  
2 now, approximately 4 ½ months later, Gay seeks to reverse or set aside the results of the  
3 Commission's determination in Decision No. 68718. The "doctrine of collateral estoppel" does  
4 not allow him to do so.  
5

6 The only issue presented for resolution by the Commission in this proceeding is whether  
7 the financial circumstances of LQS are such as to allow it to service the proposed \$440,714 loan,  
8 in the event that its financing authorization request should be approved. The reason that the  
9 Commission did not include financing authorization for additional storage and a 130 KW back-  
10 up generator in Decision No. 68718 was not because they would not be a useful and prudent  
11 facilities additions to the LQS system. Rather, as the Commission stated  
12

13 "In removing the additional storage and back-up generator from  
14 the treatment facilities included in the ACRM<sup>[1]</sup>, we are not  
15 making a finding that these investments would not be prudent. In  
16 weighing all the evidence, however, we find that the storage tanks  
17 and back-up generator components of the Company's proposal are  
18 related to overall system reliability rather than to arsenic treatment,  
19 and as such are not properly included in the ACRM<sup>[1]</sup>." [Decision  
20 No. 68718 at page 10, line 28-page 11, line 4] [Emphasis added]

21 Thus, it is abundantly clear that Gay's expressly stated goal of obtaining a hearing through which  
22 he can  
23

24 "...present facts and figures to back up my position [of support for  
25 the Miller Brooks design]..." [page 2, 1<sup>st</sup> paragraph]  
26

27 is far, far beyond the scope of this proceeding and the matters to be considered.  
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29 The October 16, 2006 Appleby intervention request suffers from the same substantive  
30 and procedural defects as the Gay request. Throughout her request, she endeavors to argue the  
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<sup>1</sup> Or, in the \$1.586 million loan from WIFA which the ACRM will provide revenues to service.

merits of the Miller Brooks Plan, as she and Gay perceive it. In addition, she endeavors to inject an issue which would ask the Commission Staff's to

“...evaluate the possibilities of [LQS] sharing cost/equipment/water with neighboring Community Water.” [page 1, 3<sup>rd</sup> paragraph, item 2]

Hence, it is equally clear that her intervention objectives also are far, far beyond the scope of the financing authorization request which is the subject of this proceeding.

#### IV.

#### ALTERNATIVE MOTION IN LIMINE

In the event that the Commission should conclude that intervention by Gay and Appleby is appropriate, because of their respective indicated interest(s), then LQS hereby submits its Motion In Limine to govern their participation in the proceeding. More specifically, if the Commission (i) concludes that a hearing should be held in connection with its consideration of and decision upon LQS' Application, and (ii) determines that the intervention requests of Gay and Appleby should be granted because of their respective indicated interest(s), then LQS moves that the Commission also issue a written directive that the scope of such intervention shall be limited to addressing the issue of whether the financial circumstances of LQS are such as to allow it to service the proposed \$440,714 loan, in the event LQS' financing authorization request should be approved.

#### V.

#### CONCLUSION

For the foregoing reasons, LQS believes that the Gay and Appleby requests for intervention in this proceeding should be summarily denied. Each seeks to intervene for the

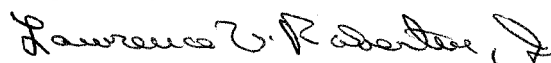
LAWRENCE V. ROBERTSON, JR.  
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1  
2 expressly stated purpose of raising and addressing issues that are not germane or relevant to the  
3 issue presented by the financing authorization application which is the subject of this proceeding.  
4 In addition, each seeks, in effect, to collaterally attack the Commission's Decision No. 68718, as  
5 issued in the Consolidated Dockets on June 1, 2006. Neither of them should be allowed to do so.  
6

7 However, in the event that the Commission (i) concludes that a hearing should be held in  
8 connection with LQS' loan authorization request, and (ii) determines that Gay and Appleby  
9 should be allowed to intervene, in the alternative, LQS hereby requests that the scope of such  
10 intervention be limited as described in Section IV above.  
11

12 Dated this 1<sup>st</sup> day of November, 2006  
13

Respectfully submitted,



Lawrence V. Robertson, Jr.  
Of Counsel to Munger Chadwick, P.L.C.  
Attorney for Las Quintas  
Serenas Water Co.

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15  
16  
17  
18 Original and thirteen (13) copies of the  
19 foregoing filed this 1<sup>st</sup> day  
20 of November, 2006 with:

21 Docket Control  
22 Arizona Corporation Commission  
23 c/o 400 West Congress, Suite 218  
24 Tucson, Arizona 85701

25 A copy of the same served by e-mail or first  
26 class mail this same date to:

27 Judge Jane Rodda  
28 Arizona Corporation Commission  
400 West Congress, Suite 218  
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ARS.